



Coalition of Higher Education Assistance Organizations
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Before the
Federal Communication Commission
Washington, DC 20554

In the Matter of)	
Interpretation Of The Telephone Consumer)	CG Docket No 18-152
Protection Act In Light Of The D.C. Circuit's)	CG Docket No. 02-278
ACA International Decision)	

**Comments of the Coalition of Higher Education Assistance Organizations in
response to "Interpretation Of The Telephone Consumer Protection Act In
Light Of The D.C. Circuit's ACA International Decision"**

Introduction:

The Coalition of Higher Education Assistance Organizations (COHEAO) supports and appreciates the Consumer and Governmental Affairs Bureau's efforts to solicit comments on some key aspects of the "Telephone Consumer Protection Act" following the recent decision of the U.S. court of Appeals for the District of Columbia in the case of ACA International v. FCC.

The mobile phone has become the centerpiece where commerce and most forms of communication is conducted. The following data further supports this statement and is an indicator of how important it is for the FCC to readdress the ability of legitimate businesses to contact consumers who have an existing business relationship with the business using automated telephone dialing systems. According to research compiled by the Pew Research Center in 2017, the vast majority of Americans (95%) now own a cell phone of some type with 77% of those being smartphones.

- The Pew Research Center data also indicates that 100% of those between the ages of 18 and 29 now own a cell phone with 94% of those being smartphones.
- The Pew Research Center also noted that 98% of those who fall into the age range of 30 to 39 have a cell phone with 89% of those being smartphones.

- In a 2016 study, Pew Research Center noted that more than 77% of those between the ages of 18 and 29 have purchased items online using their mobile phones.
- Pew Research Center also noted that seven out of 10 Americans utilize some form of social media.
- According to Statista, the number of apps available for mobile phones as of the first quarter of 2018 now exceeds 7,135,000.

Background:

COHEAO was founded in 1981 and serves as a partnership of colleges, universities, and servicing organizations (billing and collections) dedicated to promoting and managing Federal campus based loan programs, institutional and private loans, student financial wellness, and other student financial services.

Purpose

The student experience in higher education is dependent upon continual communications between the college/university and those who enroll at the institution. Due to population and age demographics of those served by higher education institutions, any communication outreach generated from colleges and universities and those who partner with them needs to be done utilizing efficient and affordable means, which includes the ability to utilize Automated Telephone Dialing Systems (ATDS). These consumers who are being served by COHEAO'S membership have an existing, legitimate business relationship with their institutions, clearly an acceptable circumstance that should permit the use of automated dialing systems to enhance the speed and efficiency of communications. This use falls outside the intended purpose of the TCPA, which is to regulate tele-marketers.

COHEAO'S comments will address the following questions:

- What constitutes an Automatic Telephone Dialing System
- How the term "capacity" should be interpreted
- How to treat calls to reassigned wireless numbers under the TCPA
- How a party may revoke prior express consent to receive calls from Automated Telephone Dialing Systems
- Pending petition for reconsideration of the 2016 Federal Debt Collection Rules

Responses:

COHEAO respectfully encourages the FCC to reconsider the true intent of The Telephone Consumer Protection Act of 1991. Our organization certainly agrees that consumer protection measures needed to be put into place to prevent unwanted marketing calls that were being generated by telephone systems that called random numbers. These marketing communications were unsolicited and disruptive.

Consumers are once again experiencing a similar situation because of illegitimate marketing and overseas generated calls used by scammers and other bad actors that take advantage of an automated system that dials random numbers. Neither current nor future regulations will prevent these types of illegal calls unless there is an increase in prosecution and development of technologies that will prevent a successful connection between these types of organizations and the consumer.

However, in an at best only partly successful attempt to protect consumers from these undesired calls, current regulations have made it extremely difficult for legitimate businesses to contact consumers for legitimate purposes to communicate important information. The current TCPA regulations have forced legitimate companies with 21st century technology to ignore that technology and operate as businesses did in the 1970's. The inability to operate as a modern company using the latest technology negatively impacts job opportunities and growth of businesses. The concept of reverting back to rotary phones to avoid running afoul of TCPA regulations is the same as asking drivers to park their cars and use the horse and buggy for transportation to avoid speeding.

The individuals ultimately harmed are those who need access to the time sensitive information being provided by legitimate businesses.

Automated Telephone Dialing System Definition

The term "automatic telephone dialing system" within the confines of TCPA consumer protection rules should be redefined to represent the faction of entities who abusively use automated telephone systems to randomly or sequentially generate numbers for the arbitrary purpose of contacting individuals who do not have a legitimate business relationship with the consumer. Defining "automated telephone dialing systems" as telephone systems that are actively being used to generate random calls and/or sequential numbers without human intervention would achieve the purpose for which the TCPA was originally passed.

The definition should also redefine the definition of "storage." It should be acceptable under TCPA for an Automated Telephone Dialing System to have the capability to store numbers that are associated with those consumers for which the caller has a legitimate business purpose to contact. The storage of these numbers would traditionally be in a file format for a specific group of individuals. This logic is comparable to that contained in a mobile phone. Owners of a mobile phone store numbers that are associated with the individuals they have some type of

relationship with. Entities should have the capability to store numbers that are associated with those they are trying to contact for legitimate business purposes.

Capacity Definition

The term “capacity” should be defined based on how the equipment is being used. Whether the equipment has or does not have the capability to be used to generate random or sequential numbers should be excluded from the definition. Rather, in the moment that a call is being generated, the question of compliance should be “how is that call being generated and for what purpose?” If the equipment in question has the future or present capacity to generate sequential numbers but is not being used in that way, then the question is a moot point. How an automated dialing system is being used at the point of call initiation should be the determinant of compliance to the laws and regulations.

Called Party Definition

Currently there is no perfect system that identifies with one hundred percent accuracy if a call is to the intended party. Legitimate businesses are attempting to contact the people they have a right to contact using the most current information available at the time the call is being generated. There is no reason why any of our members would purposely wish to initiate contact with a wrong party at a reassigned number. A contact with an incorrect party serves no practical business purpose.

It is also unreasonable to assume that the entity making the call is aware that a call is being made to a wrong party because of a reassigned number. Most of today’s consumers no longer disclose the name associated with their telephone number. Most outgoing messages on a phone in today’s environment just state that you have reached the number of (xxx) xxx-xxxx, that the person is unavailable to take the call, and suggests leaving a message.

A called party should be defined as the “intended recipient.” Once the caller has been notified that they are making calls to an incorrect person whether that be a notification from the individual receiving the call or from any other form of reasonable notification that can be confirmed, then no further attempts should be made to that number. The organization making the call is thus on notice to cease communication to the intended number.

Revoking Prior Consent:

Revoking Prior Consent is a reasonable right that should be provided to an individual who desires calls to cease. The right to revoke prior consent is very similar to the protections afforded consumers under the Fair Debt Collection Practices Act who have tell a collection agency to cease any further communication.

Individuals who are seeking to revoke prior consent should communicate that request directly to the organization that made the call. Revocation of consent should be part of a balanced approach that enables the called party to be aware of the reason why the calls were being placed. For example, a COHEAO member may be attempting to contact an individual to share information regarding a delinquent debt. Federal regulations under the Fair Debt Collection Practice Act limit information that is permissible to be left on a voice mail. The individual being called may not be aware of the intended purpose of the call and without sufficient information decides to revoke consent. Providing the receiver of the call with an option to press a key on the phone to stop further calls could be harmful to the consumer if they have not been informed about the purpose of the call.

The most prudent way to revoke prior consent would be:

- Communicate orally with the organization making the call during the conversation;
- Access the organization's website to make a notice of revocation. The revocation should be in a very practical and easy to use format to avoid confusion;
- Send a written communication to the organization generating the call;
- Include an option in any text communication to "stop." However, the revocation option should be located near the end of the communication so that the receiver has an opportunity to read the message and ability to identify the organization that is sending the text so that an educated rather than emotional decision can be made.

Pending petition for reconsideration of the 2016 Federal Debt Collection Rules

Provisions of the Bipartisan Budget Act of 2015

One of the most concerning definitions that was included in the proposed Federal Debt Collection Rules was defining a call as "any initiated call" and then restricting the maximum frequency to three "attempts" per 30 days per delinquency. We would encourage the FCC to first collaborate with the Bureau of Consumer Financial Protection and work together to find an acceptable solution. Having two separate standards of "reasonableness" by two federal agencies would be confusing and an opportunity for potential unfair liability.

We would also encourage the FCC to expand the frequency of attempts taking into consideration that the receiver of the calls has multiple options available to suspend or terminate future contact attempts by:

- Revocation of consent
- Advising the caller to cease communication

The FCC should seek advisement from the business community of what should be defined as reasonable attempts. Recommendations for consideration include:

- No more than two attempts would be permitted in a day to a specific number;
- Calls would be restricted to a maximum frequency of three days per seven-day cycle.

COHEAO is appreciative of the opportunity to share our comments regarding these critical issues that impact legitimate businesses who are committed to assisting individuals through the entire higher education experience. Information is the key to success and roadblocks that prevent the sharing of critical information is determinantal to current and former students.